

MINUTES OF HARRISONBURG PLANNING COMMISSION
March 9, 2016

The Harrisonburg Planning Commission held its regular meeting on Wednesday, March 9, 2016 at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh; Gil Colman; MuAwia Da'Mes; Judith Dilts; Jefferson Heatwole; and Henry Way, Vice Chair.

Members absent: Deb Fitzgerald, Chair.

Also present: Adam Fletcher, Director of Planning and Community Development; and Alison Banks, Senior Planner/Secretary.

Vice Chair Way called the meeting to order and said there was a quorum with six of seven members in attendance. He then asked if there were any corrections, comments, or a motion regarding the lengthy February 2016 Planning Commission minutes.

Mr. Da'Mes moved to approve the minutes as presented.

Mr. Heatwole seconded the motion.

All members voted in favor of approving the February 2016 minutes as presented (6-0).

Capital Improvement Program

Vice Chair Way read the request and asked staff for comments.

Mr. Fletcher said I would like to thank each of the Department Directors and the Capital Improvement Program (CIP) representatives for being here this evening to answer any questions that the Planning Commission might have regarding the CIP. This is not a presentation from staff. We do have the experts here from each department so feel free to ask any questions you might have. Lastly, I want to make certain that everyone received the amended projects that were part of the School Fund, if not, before you are hard copies that you can replace for existing sheets – pages 89 through 92.

Vice Chair Way said before we begin with discussion and questions regarding the CIP, Dr. Kizner with Harrisonburg City Schools would like to address the Commission.

Dr. Kizner said thank you for the opportunity to speak this evening. As you know, two years ago the Harrisonburg School Board and City Council made a very wise decision to have the School Board follow the same CIP process as other departments for the City. It is an ongoing learning experience for us all. What I would like to share with you tonight is that the Capital Improvement Plan in which the School Board approved is not the CIP that was submitted to you.

The School Board feels that if you are here tonight to make an advisory recommendation to the City Council, you should at least have a copy of what the School Board approved. We also recognize that there are things within our plan that were done in October of last year. In October the information seemed to be accurate; however, in March the information is not accurate. A specific example would be that in October 2015 the School Board was considering three different options to address the high school enrollment issues, of which you are familiar with. Since that time, it has been decided to go with a separate building to be built on the High School

property; an annex that would serve about 800 students. We also had a joint meeting with the City Council and the consensus at that meeting was to move forward with a request for proposals for architectural services to see if a building could be designed on the property and would other facilities need to be relocated to the other side of Garbers Church Road. We actually did that last week. What I am trying to show you is that the CIP you have received for the HCPSs is not aligned with decisions already made by the School Board.

Our greatest concerns with this are for the purchasing of the land, the year the purchase will take place, and when the building would be built. I know this is a planning document; we do not know what the cost would be at this point, we gave a number of what we thought it may cost. What I have learned from this experience is there needs to be greater communication between myself, the City Manager, the School Board, and the City Council, so that we can align a process that works for everyone.

Mr. Da'Mes asked whether in October 2015 the School Board approved a recommendation for the high school.

Dr. Kizner said no, that was done in December. In October we had to get our CIP to the City. Therefore, the two items were not aligned.

Mr. Da'Mes asked when the joint meeting between the School Board and City Council was held.

Dr. Kizner replied January.

Mr. Da'Mes said as you mentioned earlier, you were before Planning Commission a couple of months ago to discuss where HCPS's system was today and what the projected enrollment for the future looked like based on Weldon Cooper projections. I am assuming all decisions to this point have been made based on the same information. Now we have a planning tool, the CIP, that says we are going to push this out to 2021 for the annex building. If that were to be the case, what would the School Board be looking at doing to compensate for that length of time?

Dr. Kizner said in the operating budget for next year we are at 1,630 [students], next year we know we are going to be over 1,700. We are projecting that in 2017 there is a very good chance that we will be at 1,800. We put two trailers in this year and for the budget next year we have four trailers to go in. In reality, that is our alternative – just add trailers. Of course that does absolutely nothing for the core spaces, such as the cafeteria or gymnasium. I do not want to press the alarm button on the annex building; but I can tell you that it is an issue. When you are 300+ students over capacity and you have all these trailers outside you have security issues. There are a lot of reasons why we believe this building needs to happen before the date that the School Board did not approve.

We were hoping that when the RFP's for the building come back, the School Board would make a decision, if an architect met our standards, and a comprehensive analysis could be done on the property. We would then have actual cost figures to begin negotiations with City Council and come to some consensus as to when this annex could really occur. However, when I read the CIP document, it really pushes this date out to a time that we find unacceptable. The thing that needs to be remembered is this is not a modernization of a building; this is because of constant growth within our system. Our growth is not slowing down; in the month of February we gained another 22 students.

I just wanted you to know that the School Board felt that if you are making an advisory opinion to City Council, you should at least have what they actually voted on.

Mr. Colman said I believe this is something that needs to get cleaned up before it moves through us, rather than as it moves through the process.

Mr. Fletcher said Planning Commission needs to understand the sequence of events. The School Board sent the projects to the CIP committee in October, prior to the decision being made about how they were going to be moving forward; they were projecting a completely new high school. Once the decision was made about the \$50 million dollar annex, the committee was just using the logic that the \$160 million was not needed and put the \$50 million in instead, at a time frame that we believe the City would reasonably be able to afford those costs.

Mr. Colman said I find that to be true; however, that is something that needs to be worked out between the School Board and the City Manager before coming to us. I think that Dr. Kizner's argument is valid; but it is not up to us to make the decision.

Mr. Da'Mes said in regard to that I do not think that we should be talking about numbers ourselves, but we have a Comprehensive Plan that we want to make certain our numbers correlate with. Obviously the school system is a big consideration in that plan. What Planning Commission has done in the past is to look at the priority of the CIP item and said that perhaps something should be given a higher priority. We could advise City Council if we feel this HCPCS item needs a higher priority.

Mr. Fletcher said the priorities are somewhat pre-defined, based upon what the definition of the priority is. A priority one is absolutely required, the law requires it to be done. A priority two is highly desirable, increases efficiency, and effectiveness. A priority three is desirable. Thus a priority one can only be granted to a project that is required by law.

Dr. Kizner said I have been in front of Planning Commission three times in the past year; I have been in the position for six years and had never been in front of you until last year. I believe the process is at least being recognized and priorities on the capital side are getting attention. I see all of this as really good. I just think that as something new for us, there are still some kinks that need to be worked out.

Vice Chair Way asked whether the dollar amount for the school annex is correct at \$50 million. The \$160 million was for an entirely new high school, correct? It is more of the 2021 start date that is of concern.

Dr. Kizner replied yes.

Mr. Baugh said that is going to be a substantive issue. We must realize the City Manager recommends putting this into 2021, because from a fiscal standpoint, it looks like we could afford to take on that debt without more tax increases than we may have to do anyway at that time frame. That is what drives this; it does not mean it is carved in stone. If we have real issues on the ground, it may mean moving that date up. City Council will certainly be working with the School Board to do what we need to, even if it means moving that date up.

Mr. Da'Mes said the City Council approves a budget on an annual basis.

Mr. Baugh said yes, but I think you are really looking at debt service. That is thinking about what is the debt service on a \$50 million bond issue and where does it fit with projected income and revenue expenses.

Dr. Kizner said to me it is a lot about a communication breakdown somewhere in the line. Also, a better understanding of the authority of the School Board versus the City Manager when it

comes to the CIP for the HCPS system. My understanding and my experience is that the responsibility lies with the School Board; they are the only ones that can change the plan they adopted. So again, it is a process. These numbers have been in the plan since October and if there was a concern back in January or February there should have been conversations then. This could have been taken back to the School Board.

Mr. Da'Mes said the School Board could have a great "wish list," it would be very idealistic, but it does not mean it is necessarily feasible in terms of budget concerns. At the same time it is a planning tool and we have considerations with debt services and we may even move the item up one or two years. What I am thinking is if we all have the foresight to say "it is going to be moved up in a few years," why would we accept a plan that is pushing it out so far? I do not feel comfortable with what is in the CIP currently. My thoughts are to let the conversation continue between the School Board and City Council; is it essential that we push this document forward to City Council today?

Vice Chair Way asked about the implications if we hold this document off for a month to give some time for discussions to take place.

Mr. Fletcher said before we go there, I have my own question for better understanding of this. Is the HCPS Board still doing their own, separate CIP document?

Dr. Kizner replied yes. Two years ago during a joint meeting it was decided that we should follow the timeline that gets us to where we are today.

Mr. Baugh said there has been a whole lot more good about this, but there have been transition issues. With everything else you are actually working with departments that report directly to the City Manager, there is a long standing process and now we are trying to incorporate the School Board into this. It is understandable that there is a communication issue; there are things that need to be worked out.

Mr. Fletcher said if you are thinking you would like a different date for the \$50 million it can be suggested as it moves forward. You can recommend the CIP with suggested revisions.

Dr. Kizner said I would like you to take into consideration the date of 2018, because there could be a new body here and a new City Council in two years and someone says well the approved plan says 2021, so that must be what was meant. HCPS does not get the funding until 2021 and the school is not built until 2023.

Mr. Baugh said that is not how that actually works. 2021 is when we are paying off that debt, so the funding is more to the front side of that rather than the end.

Mr. Da'Mes said that is a good point. I do not think we are in the position to arbitrarily pick dates for these. But I think one thing we can say is we would like to see the School Board's recommendations be more aligned with what is approved.

Vice Chair Way said are you saying that we defer our recommendation?

Dr. Dilts said I believe he is saying that will be our recommendation; that there be some kind of communication between the School Board and City Council on aligning the two CIPs.

Mr. Da'Mes said I believe we have two options; the first is to tell them to come back to us in a month with this resolved. The second option would be to recommend approving the CIP with the recommendation to see more consideration by City Council with regard to the date of 2021.

Dr. Kizner said the School Board feels strongly that they are the only body that has the ability to change their plan, knowing that the City Council has the ability to reject what is within the plan. Secondly, the date, the reason we have it early is because we have an issue today.

Vice Chair Way then asked if there were questions for other department representatives before making any recommendations regarding the CIP.

Mr. Da'Mes said on page 18 under General Fund Projects, it says this will provide for renovations to the Municipal Building for code compliance, energy efficiency, and additional work space for future administration and community use. The cost is \$2.5 million in the year 2018. I have always wondered and never really felt comfortable with the transition from the Municipal Building to the new City Hall in understanding what the future plan was for the older building. I do not think anyone was able to answer the question previously, and since then I have heard numerous other options that may happen; but, my question is should we be investing in a \$2.5 million dollar renovation on a space that we do not have a plan for.

Mr. Fletcher said the explanation on this is as simple as it can be; it is telling you that it will cost \$2.5 million to bring the building into compliance. No one at this time knows exactly how it will be used, but there is a general understanding about how much it is going to cost to renovate the building. We have known for quite some time that the Municipal Building needs some attention as to code compliance.

Mr. Da'Mes said I just have a concern that we are renovating it for a particular purpose and then later we may decide instead to use it for something else.

Mr. Baugh said what you have here is a general place holder in satisfying whatever that use may be. I think what the \$2.5 million figure does is replace and bring into compliance your mechanical systems – wiring, heating/air, and so forth. This is just the projection as to what that may be; it may not even get done on the City's dime. This is not a place marker that is laying out what the particular use will be of the building in the future.

Dr. Dilts said if something is a priority one it is something that absolutely has to happen. On page 12, the Cardiac Monitor replacement is shown as a priority one, but it is not mandated.

Chief Larry Shifflett, Harrisonburg Fire Department, said Cardiac Monitors have a useful service life and these are getting close to their service life. This has to do with technology and the monitor's ability to perform certain functions on the scene. I am not aware of any legislation that says we have to replace at that time, but in comparison to today's technology, what we have is becoming antiquated.

Mr. Fletcher said is there also a component with the manufacturer regarding the useful life.

Chief Shifflett said at the end of the useful service life you lose the support from the manufacturer for repair and maintenance.

Mr. Da'Mes said the Park View Fire Station we have been waiting for a long time now, there is some equipment allocation to the new station; however, under operating costs or impacts, it is a very small number.

Chief Shifflett said the City will have to hire 12 new fire fighters in order to operate that station. We do not have enough people to just move folks there, they must be hired; additionally we will have to buy a new fire engine. We will not need the new engine the same year we occupy the

station, it generally takes a year to order and get a new engine; we will just use one of the reserve units as we wait for the new engine.

Mr. Da'Mes said equipment has a certain useful life, and then questioned what happens to the equipment when the useful life is over and whether there is a value brought back to the City?

Chief Shifflett said we have two types of equipment engines and the aerial ladder or tower trucks. We try to replace the engines at a 15 year level and we try to do the aerial ladders at a 20 year level. It is not automatic at that age, we replace in conjunction with the City Shop Foreman as it approaches its useful life; sometimes they get more life, others not so much.

Mr. Colman asked what is the current response time for the Park View area and is it within an acceptable range.

Chief said obviously that depends on which area of Park View you go to; our average time in most areas of the City is four and one half to five minutes. Some of the outer edges of Park View can be seven to seven and one half minutes.

Mr. Colman said in your view is there an immediate need; should this new station be a priority two instead of a three?

Chief Shifflett said the population of the Park View area is growing, there are a lot of retirement facilities in the area and we get a lot of medical services calls that we run.

Mr. Da'Mes asked if the station had been a "moving target" of sorts that continues to get pushed back.

Chief Shifflett said this has been in the budget for quite some time, more than ten years. At some point and time it will be the justified time; but for now it is our place holder.

Mr. Colman said the alternative is to relocate Station 4; has that been considered?

Chief Shifflett said that is a viable alternative; but when you move Station 4 from Rock Street you are increasing response times for the northeast area as well. There is still the same infrastructure cost associated with moving Station 4.

Vice Chair Way asked if there were any further questions regarding the CIP.

Dr. Dilts said I have a question regarding the Police Department regarding the record management and crime analysis system request. I am struck by the language used in the request, "HPD is in urgent need of a comprehensive and efficient records management." Yet the money you are requesting for is not slated until 2018. As I read this the company that is taking care of your current software is already out of business. Why wait until 2018, why not now?

Captain Tom Hoover, Harrisonburg Police Department, said we are trying to partner this request with Captain Junkins of the Harrisonburg Rockingham Emergency Communications Center and the Rockingham County Sheriff's Department – the whole records management system that is serviced by the particular company. We have been in need of a new records management system for probably ten years. Our current system is outdated and does not have any capabilities along the lines of what we need. Now that this company will no longer be servicing after 2017 we really need something. I believe there has been some funding from City Council to have consultants look at an overall package for the needs of the City and the County.

Dr. Dilts asked if it will take until 2018 to put together what is needed.

Captain Hoover replied there has been a study group organized to review that; I agree with you and hope that it would be before 2018.

Mr. Baugh said I can confirm there is a working group on this and it is multi-jurisdictional. That is the tough thing about this – something is needed now; but, it is not something you can just go purchase and install. Trying to coordinate all the agencies is a task, but it is absolutely something we are working towards.

Dr. Dilts said I was concerned because it says “urgent,” but gives a date of 2018.

Mr. Baugh said one of the issues that come up is when we are asked for statistical information and we have no way of putting this information together. That is part of the goal we are working for.

Mr. Heatwole said are we anticipating that the RMS needs would be okay until 2018?

Mr. Baugh said I believe Joe Paxton, Rockingham County Administrator, is really the person heading all this up and can give you the most current status report.

Captain Hoover said if our system were to go down tomorrow it would be a lot of work on us, however, I would hate to see us spend unnecessary funds towards a standalone system.

Vice Chair Way asked if there were further questions.

Mr. Da'Mes said I have more of a citizen informational question. On page 48 it talks about the street improvements for exit 247. How is the City funding this project; is it grant funding? It actually seems more like a VDOT expenditure.

James Baker, Director of Public Works, said that is a great question. It is a VDOT project; however, in the current legislation, what they call House Bill 2 Revenues, states that the locality must apply for the funding. We have applied for the funding for that and that is why it is marked as other revenue. We will be intimately involved with the project in helping to raise the project along and helping VDOT with the design because it affects our City so much. But we must apply for these State funds. There are actually three projects in the CIP that are through the House Bill 2 Program – this particular one, exit 245 for the Port Republic Road interchange, and Martin Luther King (MLK) Way/South Main Street.

Mr. Da'Mes said there is a new development planned along East Market Street at the Country Club Property. One concern that was raised was the utilization of Country Club Road and the limitations because of the I-81 bridge overpass near the railroad tracks. Where are we with widening that? Is there any light at the end of the tunnel so to speak?

Mr. Baker said those overpass bridges are not part of the exit 247 project. There are four bridges at the interchange that are in for replacement as part of this project – the two over the railroad and the two bridges that cross I-81 at the interchange. I do not see anything in the near future for improvements on those bridges you are referring to. When those bridges are improved, is when changes to the pier footers, stream bed, and railroad can all be made to improve the movement of traffic.

Mr. Da'Mes said why did the other four bridges get priority over these two bridges?

Mr. Baker said because the Federal Bridge Safety Program identified those as the most critical during safety inspections.

Vice Chair Way said with the MLK Way and South Main Street improvements is there a JMU contribution to that as well?

Mr. Baker replied that the House Bill 2 funding would be State funding, which would be the best for the City and for JMU. If the house funding is not approved, then we are looking at a revenue sharing with the State that would be 50% local funding and 50% VDOT revenue sharing; within that local match we are anticipating a local share with JMU.

Vice Chair Way asked if there were any further questions regarding the CIP.

Dr. Dilts said on page 100 regarding water and sewer funds, there is a mention of the “rural water system;” where is that system?

David Gray, Public Utilities Division Superintendent, said let me start by saying the title that identifies this as “western,” the vast majority of our water system that is outside of our City limits is to the west. This includes Belmont, Monte Vista, and finished water lines that extend all the way to Riven Rock Park. There are some other small areas to the west – Lincolnshire Drive being one, and we treat them differently than the lines in the City because it is a County customer versus a City customer. We make certain the rates applied in the County cover the expenses for the utilities in the County; that is why it is pulled out separately.

Dr. Dilts said so we supply water to the City and some areas in the County and the County citizens pay us money to maintain that infrastructure and for the water itself.

Mr. Gray replied yes. The rates charged to the County customers are intended to cover the cost of those utilities.

Vice Chair Way asked if there were any further questions regarding the CIP. Hearing none, he asked if there was any discussion on the CIP or perhaps a recommendation.

Mr. Colman said I have looked through this document, I do not think I have had enough time to really look at it in depth. We received it on Friday and so it has only been a couple of days. Everything I saw was fine, but ideally I would have like a bit more time than just two days. I am supporting the option of delaying this for another month.

Dr. Dilts asked what the consequence of delay for a month would be.

Mr. Fletcher replied that is a difficult question to answer. It would be good if this was moved forward to City Council the first part of April because of the timing sequence of having the CIP approved prior to budget time periods. If I can speak to one of the thoughts that has come up about additional communication with the School Board and City Council – I would like to question what you mean by that. A lot of communication has occurred over the past several days and I do not know if additional communication is needed; maybe it should be that they come to some sort of understanding about how this is presented. As staff, we have to put together this package for you, this is our recommendation to you. Is it something you like or are there changes you would like to see? You can suggest those changes and move the document forward.

Mr. Colman said historically the CIP would come to Planning Commission sometime in December.

Mr. Fletcher said historically we have done this as early as November; this year is just as it was last year, in March. The CIP process from a staff perspective starts in July; most people do not realize how long it actually takes. Projects have to be submitted to myself and the CIP

committee by September and then we start putting things together, evaluating, scheduling meetings, and so forth. The school projects came in just a little bit later, but that was okay, we have had some staffing issues ourselves as you know. March is probably the latest extent that you want to go with the CIP.

Mr. Colman said I feel that we need to do something; but yet only having a few days to look it through. It begs the question of how much attention are we really paying to it.

Mr. Da'Mes said I can tell you from past years experience that sometimes it has been a simple okay thank you and we pass it on to Council. Our deliberations tonight have shown that it is important to us and we are addressing concerns as it should be. In terms of a planning tool from the staff recommendation, how do we incorporate the School Board's concern into our recommendation?

Mr. Baugh said that City Council already knows all of this information that you are hearing tonight. This issue is at the forefront and it is one of the reasons why so much discussion has been focused on this one piece.

Mr. Fletcher said the replacement sheets that are in front of each of you may be what you are looking for. It captures exactly what the School Board requested. On page 92 regarding the high school annex, you can read the explanation, the note that was written explaining that City Management revised the timing cost of the project to reflect the projected timing of the City's capability to pay for the identified project. It originally came in as \$160 million in the 2017 fiscal year and then the end result was the recommendation put forth by staff.

Mr. Baugh said basically the City Manager is saying it is going to be a whole lot easier to deal with it fiscally if you put it in 2018. I understand School Board's position of "we are not certain that anyone gets to change what we put in the CIP" and the City Manager's position which is School Board cannot adopt a CIP that tells the City when it has to fund items, or even give that appearance.

Dr. Dilts said the issue with the high school annex, I thought, was the timing and not the issue of the money.

Mr. Baugh said yes, I feel the issue right now is over the timing.

Mr. Fletcher said I do not want to put words in the Commission's mouth, but if you are interested in a consideration of recommendation for this time period to be moved up, you can always offer it as a recommendation.

Mr. Da'Mes said I feel that is in line with what our Comprehensive Plan states. It would be a priority over some other important things.

Vice Chair Way asked if there was a motion.

Dr. Dilts moved to recommend moving the CIP forward to City Council, with the suggestion that the date for the high school annex project be moved forward. I also want to say as part of that recommendation, we owe a debt to each department for the fine work that they have done on putting this together and for the work in general that you do. Thank you.

Mr. Da'Mes seconded the motion and noted that the Superintendant did have two points of concern, the second being the appropriation of the property. We are only addressing the one point regarding the high school annex time line.

Mr. Baugh said that is in progress and is being looked into. It is unknown if property is going to have to be purchased or what the factors for purchasing property would be. All of these issues are being discussed as we try to move in that direction. We know we will be working on this sooner rather than later.

Mr. Colman said I do not know if we need to include this because it sounds like it may be worked out before it gets to City Council; but, the suggestion that the School Board work it out with the City Manager before it gets to Council. That is my recommendation.

Vice Chair Way said the motion before you is to recommend the 2016/17 through 2020/21 CIP to City Council with the emphasis on and language that we have spoken of here. He then called for a voice vote on the motion.

All voted in favor of the motion (6-0).

Vice Chair Way thanked all the City Department Heads and CIP representative for attending tonight.

Zoning Ordinance Amendment – Sections 10-3-24, 90, and 96 related to Plant Nurseries and Greenhouses

Vice Chair Way read the request and asked staff to review.

Mr. Fletcher said staff is proposing to amend Section 10-3-24 by modifying the definition of “Plant nurseries and greenhouses” by adding “landscaping businesses and similar operations” to the titled definition. Section 10-3-90, which is the Uses Permitted By Right section of the B-2 General Business District, would be modified within subsection (17) by aligning the existing specified uses (plant nurseries and greenhouses) with the modified definition noted above by adding “landscaping businesses and similar operations” to the list of permissible uses. Similarly, Section 10-3-96, which is the Uses Permitted By Right section of the M-1 General Industrial District, would be amended within (16) also by aligning the existing specified uses (plant nurseries and greenhouses) with the modified definition noted above by adding “landscaping businesses and similar operations” to the list of permissible uses. Staff is further proposing for the identified uses within the M-1 district the ability to have small-scale, outdoor manufacturing, processing, storage, and treatment of products as part of a plant nursery, greenhouse, landscaping business, or similar operation, when such uses are compatible with surrounding uses.

The proposed amendments originated after a citizen proposed a landscaping-like business within the M-1 district that would have included outdoor processing and manufacturing—in this particular case, the individual was interested in processing and manufacturing mulch. Although the landscaping-type business was permitted by right, staff knew the M-1 zoning district under the current Zoning Ordinance would not permit outdoor processing and manufacturing because Section 10-3-99 (c), among other things, states that “unless otherwise permitted, all accessory storage or products to be processed or being processed, and supplies and waste materials resulting from such work, shall be completely enclosed within the structures of permanent and durable construction” (emphasis added). Given the desired location of the operation and the exact type of outdoor manufacturing that was desired, staff believed the ordinance was overly burdensome.

Overall, staff believes the proposed amendments are good planning and zoning practices. Specifically, the language within Section 10-3-96 (16), which states that the uses must be “compatible with surrounding uses” is important to understand because this will provide a level

of scrutiny for the Zoning Administrator to ensure that such uses do not cause undesirable dust and debris, noise, lighting, or other issues for adjacent properties. For example, at this time staff does not believe it would be appropriate to have a landscaping operation that includes outdoor processing and manufacturing adjacent to a residential zoning classification or on M-1 properties that are located within or adjacent to the City's downtown area. If the Zoning Administrator interprets a particular small scale, outdoor manufacturing, processing, storage, or treatment of products operation that is associated with a landscaping-like business as not being compatible with surrounding uses and the property owner believes the interpretation is wrong, they may appeal the decision to the Board of Zoning Appeals.

Staff recommends approving the proposed Zoning Ordinance amendments as described and shown herein.

Vice Chair Way asked if there were any questions for staff.

Mr. Colman said when talking about the storage of materials other than plants needs to be screened, are we giving any consideration to the processing activities that we are opening up?

Mr. Fletcher said we did not give any consideration to that; but you must pay particular attention to the language in the B-2 district, which states "all outside storage must be screened other than plants." The same language is not carried over to the M-1, and that district is where the operations would be occurring.

Vice Chair Way asked if there were further questions. Hearing none, he opened the public hearing and asked if there was anyone present who would like to speak regarding the ordinance amendments.

Mr. James Flynn, 699 John Tyler Circle, said he is the citizen who brought this forward to staff. I am looking to start a small mulching operation and thanks to Mr. Fletcher and Mrs. Banks for helping me to get this through. The main point being it is essential to be outdoors with this type of operation; you need moisture from rain and the different climates and temperatures. There is also the concern of carbon monoxide when operating the mulching equipment indoors. Thank you for hearing this request.

Vice Chair Way asked if there was anyone else wishing to speak regarding this request. Hearing none, he closed the public hearing and asked for discussion.

Mr. Colman said is this the first time this has come up, in terms of small manufacturing in M-1.

Mr. Fletcher replied yes.

Mrs. Banks said the larger manufacturing processing businesses currently comply with the requirement of being completely enclosed.

Mr. Fletcher said yes there are many larger manufacturing operations; but of course their operations are internal. They have large ventilation systems, mechanical systems, and meet all the requirements. Remember we are an urban environment, so we do want the noise and view to be controlled.

Mr. Colman said I believe this is a great way to do this for smaller businesses. I move that we recommend approval of the Zoning Ordinance amendments to Sections 10-3-24, 90, and 96 related to Plant Nurseries and Greenhouses as presented by staff.

Dr. Dilts seconded the motion.

Vice Chair Way asked if there was any further discussion. Hearing none, he called for a voice vote on the motion.

All voted in favor (6-0).

Vice Chair Way said this will move forward to City Council on April 12th with a favorable recommendation.

Zoning Ordinance Amendment – Section 10-3-24 Definitions, and Multiple Sections within Article W Board of Zoning Appeals (To Align the Zoning Ordinance with recent changes to the Code of Virginia regulating BZAs)

Vice Chair Way read the request and asked staff to review.

Mrs. Banks said this is a public hearing to consider a request to amend the Zoning Ordinance Section 10-3-24 Definitions and several sections within Article W Board of Zoning Appeals (BZA) to align the City Code with approved changes to the Code of Virginia that occurred during the 2015 Virginia Acts of Assembly and in general to perform a few housekeeping revisions to line up our Code better with the State Code.

Overall, the changes herein described pertain to the procedures and criteria under which the board grants variances and decides appeals. The amendments would occur within Section 10-3-24 Definitions and the following code sections within Article W Board of Zoning Appeals: 10-3-132 and 10-3-135 through 10-3-140.

In general, the BZA is charged with: hearing and deciding appeals to decisions of the Zoning Administrator, authorizing variances that allow deviations from particular zoning regulations, hearing and deciding applications for interpretations of the zoning map, and to determine (in cases of uncertainty) the district classification of any use not specifically named in the Zoning Ordinance.

The existing definition of “variance” within Section 10-3-24 is proposed to be updated by removing the requirement of a property owner proving that strict application of the ordinance results in “unnecessary or unreasonable hardship” and replacing it with the requirement that an applicant demonstrate that strict application of an ordinance would “unreasonably restrict the utilization of the property.” Changes made to Section 10-3-132 titled Composition, would be amended to better define the duties of the secretary of the BZA and the BZA members. New criteria to decide appeals would be added to Section 10-3-135 titled Powers, while Section 10-3-136 titled Variances would be updated to reflect the new definition of a “variance” and outline the criteria under which one can be granted. Section 10-3-137 titled Conditions Attached to Approvals, has been removed altogether since the power to impose conditions is given at the end of Section 10-3-136. Section 10-3-138 titled Amendment of Variance, would be changed to require applicants to follow the same process as individuals applying for a variance. Three new subsections have been added to Section 10-3-139 titled Procedures on Applications and Appeals, to include the requirements of equal say during a public hearing, availability of materials to the applicants and the public, and for issues associated with open communication among all parties involved while a case is open.

The purpose of most of these changes is to clarify the criteria under which the board can grant a variance. In the past, deciding whether or not an applicant met the requirement of a “hardship” has been difficult. With this amendment, the hope is that the BZA will find it easier to determine if a property’s utilization is being unreasonably restricted by regulations within the Zoning

Ordinance. Other important changes that are proposed within Article W are to further ensure that applicants are being treated fairly and have equal access to all of the materials and conversations surrounding their case. As noted in the Summary section above, several of the proposed amendments are not associated with recent changes to the Code of Virginia, but rather are put forth to better align the overall regulations of the BZA with the Code of Virginia.

Staff recommends approving the proposed Zoning Ordinance amendments as described and shown herein.

Vice Chair Way asked if there were any questions for staff.

Mr. Heatwole said within the section that discusses adjoining property owner notification and states “such notice shall be given by first class mail rather than by registered mail,” was there a previous requirement that it must be sent by registered mail?

Mrs. Banks replied no, this has always been allowed and is not a change initiated by State Code changes, but rather a housekeeping change.

Mr. Fletcher said just to clarify one thing regarding these changes. We are not that far behind with changes to the State Code, as a matter of fact we had these changes prepared and on the Planning Commission agenda for July 2015, right after it was adopted. Staff did not like the way we were moving forward with the changes and we actually pulled the item from the agenda in order to make more changes.

Vice Chair Way asked if the Board of Zoning Appeals had an opportunity to review this.

Mr. Da’Mes said yes and they have no issues. Actually they feel this will help when deciding on requests because previously it has been hard to meet the hardship requirement as spelled out.

Vice Chair Way asked if there were any further questions. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak regarding the ordinance amendments. Hearing none, he closed the public hearing and asked if there was discussion or a motion.

Dr. Dilts moved to recommend approval of the Zoning Ordinance Amendment – Section 10-3-24 Definitions, and Multiple Sections within Article W.

Mr. Colman seconded the motion.

Vice Chair Way called for a voice vote on the motion.

All voted in favor (6-0).

Mr. Da’Mes said I would like to mention that in December 2016 my tenure on Planning Commission comes to an end and therefore it will be my end of term on BZA. I would like for my fellow Commissioners to consider this role and not just necessarily hand it over to my Planning Commission replacement. It is not a frequent or monthly commitment, but it does come up a couple of times yearly. What I think are some useful attributes to have would be someone with an understanding of architectural design because sometimes it comes in handy. So please, consider the role.

Unfinished Business

None.

Public Input

None.

Report of Secretary and Committees

Mrs. Banks said proactive zoning visited two sectors again this month in an effort to catch-up. They were in Spotswood Acres and the Jefferson Street Area. In the Jefferson Street Area inspectors found 36 violations and in Spotswood Acres there were five violations. They will again pick-up two sectors this month.

Other Matters

Vice Chair Way said under “Other Matters” we are going to discuss revisions to Section 15-2-24.

Mrs. Banks said I have several slides for review tonight that capture several of the issues discussed at last month’s meeting. There is a draft copy of Section 15-2-24 with some of the changes that Planning Commission (PC) agreed upon last month; for example, removing the two acre requirement and the reduction of the 25-foot setback. There was a desire to better define chicken coops or pens; and proposed language is added within Section 15-2-24 (c) 4. PC was interested in providing some type of educational component to those desiring to keep chickens and we have acquired brochures and literature from the Department of Agriculture, as well as a website we can refer to.

During last month’s conversation PC talked about a reduction in the required setback for chicken coops/pens. I have provided several maps showing a reduction to 10 and five feet for the setbacks; five feet is the current setback for accessory buildings within residential areas. As well, Section 15-2-24 was modified to specify that coops/pens must be within the rear yard.

The Virginia Poultry Federation proposed a 1,000-foot buffer from all poultry facilities at the February meeting and, after review, PC asked to see a map showing just adjacent property setback from the specified facilities. I realize it is difficult to see the smaller version of the map and there are larger versions laying on the table if you would like to look at them.

Several questions arose after last month’s meeting regarding some of the current language within the chicken ordinance. For example under subsection (7), where it states “all pens must be kept in a neat and sanitary condition at all times and cleaned on a regular basis and once a permit is obtained pursuant to this section, the permittee agrees to a semi-annual inspection by the Virginia Department of Agriculture and Consumer Service Veterinarian,” there was a question as to whether this is correct. I contacted Dr. Hopson and he informed me that no, this type of inspection would not occur. Therefore, we have removed the portion regarding the semi-annual inspection. Remember, the City Animal Control Office will be inspecting site each year you apply for your permit, or on a complaint basis.

Under current subsection (9) which discussed litter, waste and removal of carcasses; the landfill does not accept litter and waste. If you are not composting or using the litter for fertilizer on site, you would need to contact a bona fide litter service. As well, the landfill does accept animal carcasses, by appointment; they should not be put in the trash.

Lastly, we included the language proposed by the Stormwater Advisory Committee regarding a 20-foot setback from specific drainage areas.

I know this is a lot to take in at once, but staff is here to help answer questions should you have anything for us.

Mr. Colman asked if there were any requirements for how deep you needed to bury a dead animal on site.

Mrs. Banks said not that I have found. We have had some conversation with Dr. Hopson regarding some information he provided requiring a 50-foot setback when burying animals on site. However, after research we discovered this does not specifically apply to back yard chickens.

Mr. Fletcher said as I thought about this, I questioned how does one know whether their bird died of natural causes or from the avian flu.

Vice Chair Way said under the draft ordinance language in subsection (9), it suggests the dead animal must be taken to the landfill and cannot be buried on site. Is this correct?

Mr. Fletcher said what we have learned is that yes, you can bury on site. This subsection would need to be amended and updated with the new information we have gathered.

Dr. Dilts said the point of this is that you cannot just put it in a trash container.

Mrs. Banks replied yes, you cannot put it in the trash that is collect at the street. However, if you do not want to bury it on site you may make an appointment with the County landfill to drop it off there. There is a fee associated with taking it to the landfill.

Dr. Dilts asked how would one know if a bird has died of the avian flu and can that bird be buried on site? Do they bury entire infected flocks on site?

Mr. Heatwole replied yes, they bury on site and it is a rather big process. But remember there is a big difference between a backyard chickens and the poultry industry.

Mr. Colman said how do we enforce not burying in the backyard if the bird has avian flu?

Vice Chairman Way said the critical element is that no dead bird shall be deposited within the trash container that is collected by public or private waste collectors. That is the bigger concern of transporting and spreading the disease. The primary option is to bury on site.

Mr. Fletcher said moving forward I promised Mr. Bauhan with the Virginia Poultry Federation that I would provide you with the information from them regarding their position that they would prefer the 10-foot setback over the five-foot setback; that they would also like for the VDACS facility on Mt. Clinton Pike to be included in that list of facilities within the buffer zone; and they felt that the adjacent lot buffer was not secure enough and would like something else considered.

Mrs. Banks said another question brought up last month was regarding Rockingham County's regulations for setbacks for chicken coops/pens and staff did speak with the County about this. For a commercial poultry facility, a very intense use, it requires a large setback. The County does allow backyard chickens in the Agricultural Zoning District – setbacks for structures less than 580 square feet is five-feet on sides and rear; setbacks for structures greater than 580 square feet is 15-feet on sides and 35-feet on the rear. Most residential subdivisions, such as Belmont or Battlefield Estates, have language within their covenants that restricts the keeping of any poultry; as well, the County Ordinance does not permit the keeping of poultry in

residential districts. However, there are some Residential/Recreational (RR) districts that do allow the up to five birds by special use permit.

Mr. Colman said the setback for poultry houses is 300-feet in the County?

Mrs. Banks said yes, that setback is for the large commercial poultry facilities.

Mr. Colman asked if there was any type of buffer zone from the poultry houses, such as the one we are trying to establish.

Mrs. Banks replied no.

Mr. Baugh said it is banned in the residential districts. However, the County just did a study that shows that slightly over half of their residential units are on agriculturally zoned property, not residentially zoned property. So it is banned in the residential zoning; but most of their dwellings are not within a residentially zoned area.

Vice Chair Way asked if there were any further questions for staff. Hearing none, he asked if staff would return to the “bullet point” slide. He then said this is not a public hearing; however, we will open the floor to those who wish to speak.

Mr. Hobey Bauhan with the Virginia Poultry Federation said he appreciates the fact that PC is open to additional input. We do have serious concerns about trying to protect our poultry industry. I suggest that when you do have an unexplained death of a backyard chicken not to remove the bird and instead contact VDACS before burying. They would come out and take a look, probably take samples and test them back at their lab. Basically, you would keep the site on lock down until the test came back. If it was negative, then your proper disposal would go into play; if not, you would have a whole other issue with quarantine and stopping the spread. So I suggest talking to VDACS first when a chicken dies. I am a bit uncertain about the best thing from an environmental standpoint when burying on site; we do not bury on farms for a routine death. I suggest contacting Virginia Department of Environmental Quality (DEQ).

Again, I would appreciate your re-evaluating that adjacent property only buffer zone. Perhaps there is an answer somewhere in the middle.

Mr. Heatwole said I did like the language the Virginia Poultry Federation proposed that said if the parcel, or lot, falls within that specified amount of feet, then that property would not be allowed chickens. I do agree that just the adjacent parcel is not enough of a buffer.

Vice Chair Way asked if there was anyone else desiring to speak.

Quillon Hall, 675 New York Avenue, said again, thank you for bringing this topic up and the time spent on it. As far as the setback is concerned, I think a 10-foot setback for the chicken coop/pen in the backyard leaves a good amount of space for people to move their coops around in their yards. I also think a 500-foot buffer is a good compromise from the 1,000-foot buffer and the adjacent lots. I do realize that will leave some people will be left out, but again it does open it up for a lot more people to do it than before.

I did a quick Google search on the life expectancy of a chicken, and it is 7-8 years. So when you talk about disposal of a carcass because of age of a chicken you are talking about possibly four carcasses in about eight years; which is not an exorbitant amount of chickens to bury in your backyard.

Mr. Heatwole said I think between five and ten feet is adequate for a setback as well.

Mr. Da'Mes said if you have a right to put a rabbit cage right up to the property line, then why does the bird cage have to be set back? I do not understand the preference of ten feet for chickens, when it is five for other pets.

Mr. Fletcher said if someone were to put a dog house on their property it would be considered an accessory building and staff would tell them there is a five foot setback. However, if it is just a fence or opened unenclosed pen, like the ones you can buy, those are sometimes incorporated right into the backyard fence. In other words you could fence in your entire property and that is your pen for your pet. Or you could pen your pet in a corner of your property and the structure is within that penned in area.

Vice Chair Way asked how PC would like to proceed with this. Do we want to make a recommendation to City Council regarding this?

Mr. Fletcher said my suggestion is that you not move forward to City Council until you have a solidified, pre-written ordinance that Council can read through.

Vice Chair Way said would you like for PC to give recommendations to you at this time and then staff would bring something back next month.

Mr. Fletcher said yes, that is what staff would prefer. We would also do new maps based on the buffer that you suggest and the setbacks.

Vice Chair Way said some of the outstanding points that we have are the property line setbacks, the distance of a buffer zone around poultry facilities...

Mr. Heatwole said on that point I would put forward that the buffer be 500-feet and that if any property falls within a portion of the 500-feet it is included within the buffer and thus they are excluded from having chickens.

Mr. Colman said any property that touched the 500-foot buffer?

Mr. Heatwole replied yes.

Mr. Colman said I would like to mention that if DEQ has something, we should include it within this ordinance.

Mr. Fletcher agreed and said he would check with DEQ.

Vice Chair Way said he is strongly supporting the five foot setback for chicken coops/pens rather than the 10-foot.

Dr. Dilts said the reason I am not convinced is that some of these lots are really narrow. How do you respect the integrity of your neighbor's yard or living space and yet also have your dog, cat, or pet out there. That is why I was more for the 10-foot.

Mr. Colman said do we want language that specifies a minimum number of feet from a residence?

Mr. Fletcher said that would be tough to enforce.

Mr. Heatwole said it will be inspected by the Animal Control Officer and she will know the property lines.

Mrs. Banks said no, not necessarily. We will provide her with an estimated idea; however, we do not know the exact property line.

Mr. Fletcher said there was a comment last month about setbacks being a bit easier to regulate and in reality, unless you have a current survey and pins marked, you really do not know.

Mr. Colman said so the distance from a residence could be much easier to enforce than a setback from the property line.

Vice Chair Way said if that is the case, should we not be increasing the distance for dog houses, rabbit cages, and such; if it is good for the chicken, why not for all pets or animals? He continued by asking if there was a consensus regarding the buffer from poultry facilities; is 500-feet the consensus?

Mr. Fletcher said is that including the recommendation that the VDACS facility be added to the list of facilities buffered?

Mr. Da'Mes said I am a bit concerned about putting that on staff to determine 500-feet and which lots does it include.

Mr. Fletcher said it really is not an issue. A 500-foot buffer will be drawn around the parcel using GIS. It will indicate all parcels that are touched by the buffer, and then by clearly stating that if the 500-foot buffer touches your parcel you cannot have chickens; there should be no issues. I am comfortable with that.

There was a consensus among the members to include the VDACS facility and a buffer of 500-feet.

Vice Chair Way said what is our suggestion regarding dead birds. Should it read bury on site, or take to the landfill for disposal; but, do not place in trash for pick-up.

Mr. Fletcher said that is good and I will be contacting the DEQ with questions as well.

Vice Chair Way said the remaining question is five or ten feet; what are we thinking?

There was a consensus to require a setback for chicken coops/pens of five-feet.

Vice Chair Way asked if there were any other outstanding elements of the revised Section 15-2-24 ordinance that staff needs direction on.

Mr. Fletcher said I believe that will cover it. If you all give us the freedom to amend other small things as we see fit, and to come back next month with the changes, I believe we will be fine.

Mr. Colman said I do believe a distance from an adjacent neighbor's residence would be helpful.

Dr. Dilts said these homes on the narrow lots are already within five-feet of the property line.

Mr. Fletcher replied correct, most are within five to zero feet of the property line.

Mr. Colman said are we saying we do not even want to consider a distance from neighboring residences?

Mr. Heatwole said I believe we are okay with just requiring a five-foot setback from property lines. Is everyone okay with that?

There was a consensus to just go with the five-foot setback.

Vice Chair Way thanked everyone for their work on this and asked if there was any “Other Matters” to be discussed.

Mrs. Banks mentioned that folks needed to sign-up for the Rockingham County Planning Commission meetings.

Dr. Dilts apologized about not attending the March County PC meeting and said she would attend in April.

Adjournment

The Planning Commission meeting was adjourned at 9:30 p.m.